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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of )  
Dalton Tanonaka )  
Tanonaka for Congress and Dalton Tanonaka, )  
in his official capacity as treasurer )  
Kyle Dong )  
Incentive Design Builders, Inc. )  
Burt Okihara )

MUR 5571

**SENSITIVE**

GENERAL COUNSEL'S REPORT #2

**I. ACTIONS RECOMMENDED**

Dismiss the allegation that Dalton Tanonaka and Tanonaka for Congress and Dalton Tanonaka, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 441a(f) or 441b(a) with the respect to the \$4,000 loan Dalton Tanonaka made to Tanonaka for Congress; take no further action against Dalton Tanonaka and Tanonaka for Congress and Dalton Tanonaka, in his official capacity as treasurer, with respect to the \$65,000 loan Dalton Tanonaka made to Tanonaka for Congress; take no further action against Incentive Design Builders, Inc. and Kyle Dong; take no further action against Dalton Tanonaka and Tanonaka for Congress and Dalton Tanonaka, in his official capacity as treasurer, with respect to the \$11,000 loan Dalton Tanonaka made to Tanonaka for Congress, and send an admonishment; take no further action against Burt Okihara; approve the appropriate letters; and close the file.

**II. BACKGROUND**

At issue in this matter is whether three loans that Dalton Tanonaka, a 2004 Congressional candidate from Hawaii's 1<sup>st</sup> Congressional District, made to his principal campaign committee, Tanonaka for Congress ("the Committee"), were financed with funds that were excessive or prohibited under the Federal Election Campaign Act of 1971, as amended ("the Act"). The

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1 Commission made reason to believe findings with respect to two of the loans and authorized an  
2 investigation.

3 Tanonaka made the first loan, in the amount of \$4,000, on July 21, 2004, and the  
4 Committee reported that the loan came from his personal funds. In his response to the  
5 complaint, Tanonaka stated only that the \$4,000 in cash he used to make this loan came from  
6 personal gifts he received for his birthday, which fell on June 13, but provided no further details.

7 There was insufficient information at the reason to believe stage to recommend that the  
8 Commission make a finding with respect to this loan. *See* First General Counsel's Report  
9 ("FGCR") at 7 (dated February 21, 2006). During the investigation, we learned some additional  
10 details about the circumstances surrounding Tanonaka's claim that he used cash gifts received on  
11 his birthday to make this loan.

12 Tanonaka made the second loan, in the amount of \$65,000, on August 28, 2004. As with  
13 the first loan, the Committee reported that the loan came from the candidate's personal funds.  
14 The information available at the reason to believe stage indicated that Tanonaka might have  
15 financed this loan using a corporate contribution from Kyle Dong and one of his companies,  
16 Incentive Design Builders, Inc. In response to the complaint, Tanonaka claimed that the loan  
17 was funded using a \$70,000 lump-sum payment he received pursuant to a longstanding  
18 consulting contract with the Koa Companies, four timber harvesting and development companies  
19 operated by Kyle Dong.<sup>1</sup> *See* Consulting Agreement, dated April 25, 2003 (Attachment 1). The  
20 Commission found reason to believe that Dalton Tanonaka and the Committee knowingly and  
21 willfully violated 2 U.S.C. §§ 434(b) and 441(b) by accepting the \$65,000 contribution, and

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<sup>1</sup> The Koa Companies include Hawaii Forest Preservation LLC (a Hawaii limited liability company), and three Hawaii for-profit corporations. Koa Timber, Inc., Incentive Design Builders, Inc., and K&K Investments. Publicly available documents identify Dong as the registered agent for all of these companies.

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1 falsely reporting the source of the loan, respectively.<sup>2</sup> The Commission also found reason to  
2 believe that Incentive Design Builders, Inc. and Kyle Dong, as a corporate officer consenting to  
3 the contribution, violated 2 U.S.C. § 441b(a) by providing the funds used by Tanonaka to make  
4 the \$65,000 loan to the Committee.<sup>3</sup> At that time, the Commission authorized an investigation  
5 into whether the consulting agreement between Tanonaka and the Koa Companies was *bona*  
6 *fide*; whether Tanonaka actually performed the work for which he was paid; and whether the pay  
7 he received was commensurate with the amount of money that would be paid to any similarly  
8 qualified person for the same work over the same period of time. 11 C.F.R. § 113.1(g)(6). *See*  
9 FGCR at 9-10.

10 Finally, on October 8, 2004, Tanonaka made a third loan to the Committee in the amount  
11 of \$11,000, and again the Committee disclosed that this loan also came from his personal funds.  
12 Federal prosecutors in Hawaii investigated this loan, concluding that the loan came not from  
13 Tanonaka's personal funds but instead from a \$25,000 loan he had obtained from his brother-in-  
14 law, Burt Okihara. Ultimately, Tanonaka pled guilty to a misdemeanor of accepting a federal

<sup>2</sup> Knowing and willful intent with respect to the making of this loan to the Committee was inferred at the reason to believe stage because the circumstances surrounding Tanonaka's receipt of the \$70,000 and the subsequent loan to his campaign appeared to reflect a deliberate scheme to conceal as sham "compensation" the source and amount of a prohibited contribution. *See United States v Hopkins*, 916 F.2d 207, 213-14 (5th Cir. 1990)

<sup>3</sup> Although the consulting agreement was between Tanonaka and the Koa Companies, only Incentive Design Builders, Inc. was named as a respondent in this matter because the \$70,000 check at issue was drawn on that corporation's bank account.

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1 contribution that exceeded the \$2,000 limit.<sup>4</sup> *See* 2 U.S.C. § 441a. The Memorandum of Plea  
2 Agreement from the criminal matter ("Plea Agreement") (Attachment 2), indicated that the  
3 Committee accepted an excessive contribution in violation of 2 U.S.C. § 441a and falsely  
4 reported the source of the loan in violation of 2 U.S.C. § 434. The available information at the  
5 reason to believe stage suggested that Okihara might have made an excessive contribution  
6 because it appeared that he knew some or all of the \$25,000 he gave to Tanonaka was going to  
7 be used to benefit his campaign. Accordingly, the Commission found reason to believe that  
8 Dalton Tanonaka knowingly and willfully violated 2 U.S.C. §§ 441a(f) by accepting excessive  
9 contributions in connection with the \$11,000 loan, and that Tanonaka for Congress and Dalton  
10 Tanonaka, in his official capacity as treasurer ("the Committee"), knowingly and willfully  
11 violated 2 U.S.C. §§ 441a(f) and 434(b) by accepting the excessive contribution and falsely  
12 reporting the source. Further, the Commission found reason to believe that Burt Okihara made  
13 an excessive contribution to the Committee in violation of 2 U.S.C. § 441a(a)(1)(A). The  
14 Commission authorized an investigation into whether Okihara was the sole source of funds used  
15 to make the \$11,000 loan and also whether he violated the Act knowingly and willfully. *See*  
16 FGCR at 6 and 11.

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<sup>4</sup> Tanonaka also pled guilty to three felony charges related to his disguising the true source of loans he reported making from personal funds to his 2002 campaign for Lieutenant Governor of Hawaii, and an additional misdemeanor charge of failing to disclose a consulting position with the Koa Companies on his U.S. House of Representatives Financial Disclosure Statement. *See* Plea Agreement, Exhibit "A". Tanonaka was sentenced to three months in prison, three months of home detention with electronic monitoring, three years of supervised release, and payment of a \$10,000 fine. *See* Judgment, dated November 16, 2005. According to his probation officer, Tanonaka has paid both the \$10,000 fine and a \$325 special assessment. Hawaii's Campaign Spending Commission ("CSC") also fined Tanonaka \$7,500 for failing to report as contributions the 2002 funds he used to make loans to his state campaign committee. According to the CSC, Tanonaka has paid \$5,000 of the state fine. In June 2006, Tanonaka, who had just started the supervised release portion of his sentence, was granted permission by the U.S. District Court in Hawaii to relocate to Indonesia in order to accept a position with Metro TV, a Jakarta-based television station. Tanonaka recently completed the first year of a three-year contract with Metro TV.

1    **III.    DISCUSSION**

9            **A.    THE \$4,000 LOAN**

10            Tanonaka contends that the \$4,000 in cash he loaned to the Committee came from  
11    monetary gifts he received for his 50<sup>th</sup> birthday, which was celebrated with a party at his home  
12    on or about June 12, 2004, three days after he announced his candidacy.<sup>5</sup> However, Tanonaka  
13    claims that he does not recall, and has no record of, the individuals or entities that gave him these  
14    cash gifts and cannot state whether any of these individuals or entities had previously given him  
15    such monetary gifts. He asserts that the practice of giving monetary gifts at Christmas and on  
16    other special occasions, such as milestone birthdays, is customary for adults in the Asian-  
17    American community. Tanonaka claimed that, in accordance with this practice, he had received

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<sup>5</sup> Our investigation indicated that while Committee staff and local politicians were in attendance, Tanonaka's birthday party was not a campaign event, and contributions were not openly solicited or collected. Nevertheless, several guests recalled Tanonaka mentioning his candidacy and asking people for their support during the course of the party. One guest, Leilynne Lau, stated that she gave Tanonaka \$200 in a birthday card, but that the check was an unsolicited contribution to Tanonaka's recently announced Congressional campaign, not a birthday gift. Although Lau's check was made out to "Dalton Tanonaka," she wrote in the memo line, "[g]o get 'em!!" On June 14, 2004, Tanonaka sent Lau an e-mail message in which he stated, in pertinent part, "[a]nd thank you for your contribution." The federal criminal investigation into Tanonaka's state and federal activities discovered that Tanonaka deposited Ms. Lau's \$200 contribution check into a personal bank account he held with his wife. Tanonaka, who claimed not to recall receiving Ms. Lau's contribution check or sending the thank you e-mail, said he must have mistakenly deposited the check into the personal bank account. Notwithstanding Tanonaka's denial, the evidence indicates that he commingled committee funds with his personal funds in violation of the Act. See 2 U.S.C. § 432(b)(3) and 11 C.F.R. § 102.15. However, given the *de minimis* amount at issue (\$200), we make no recommendation regarding this activity.

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1 \$5,000 for his 40<sup>th</sup> birthday and usually received \$1,000 on Christmas from parents, siblings,  
2 other relatives and good friends.

3 During the investigation we located one individual who admitted giving Tanonaka a cash  
4 gift for his birthday. Michael Masuda, the Committee's treasurer, stated that he gave Tanonaka a  
5 \$100 cash gift at the birthday party and assumed it was part of the \$4,000 Tanonaka later loaned  
6 to the campaign. According to Masuda, it was common to give money on milestone birthdays  
7 and, although he was unable to provide further details, believed that others had also given  
8 monetary gifts to Tanonaka. However, Masuda, who had known Tanonaka for several years,  
9 stated that he had never before given Tanonaka a monetary gift. We found no additional party  
10 guests who gave Tanonaka a cash birthday gift.<sup>6</sup>

11 Federal candidates may, with a few exceptions, make unlimited campaign expenditures  
12 from personal funds. 11 C.F.R. § 110.10. Personal funds include gifts of a personal nature that  
13 had been customarily received by the candidate prior to the beginning of the election cycle.<sup>7</sup>  
14 2 U.S.C. § 431(26)(B)(vi); 11 C.F.R. § 100.33(b)(6). Because the \$100 Masuda gave to  
15 Tanonaka on his birthday did not constitute a gift "customarily received prior to candidacy," it  
16 should be considered an unreported contribution.<sup>8</sup> 2 U.S.C. § 431(26)(B)(vi); 11 C.F.R.  
17 § 100.33(b)(6).

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<sup>6</sup> We were unable to determine the total number of guests attending the party, which was a joint birthday celebration for Tanonaka and his six year old daughter. We were able to locate and speak with 10 individuals who attended the party. At least 20 of the guests in attendance participated with Tanonaka in a high school reunion committee. According to reunion committee member Ghary Won, the group did not give Tanonaka a monetary gift, but instead followed their usual routine and "threw in together" and bought him a "joke gift."

<sup>7</sup> The Commission has focused on objective factors in determining whether a gift fits into the category of gifts of a personal nature customarily received prior to candidacy. Specifically, the Commission tends to look at the date the gifts began, the consistency in the amount, and the form of the gifts over a number of years. See Advisory Opinion 1988-7 (Bakel)

<sup>8</sup> Masuda's total contributions to the Committee, including the \$100 he gave Tanonaka at his birthday party, was \$320

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1           However, because we were unable to locate any other individuals or entities that gave  
2 Tanonaka the cash gifts that he claims were the source of the money he loaned to his campaign,  
3 or uncover the circumstances relating to the receipt of those cash gifts, we are not able to  
4 determine whether those cash gifts also violated the Act. Given that we were only able to  
5 establish that a *de minimis* amount of money given to Tanonaka in connection with his birthday  
6 violated the Act, we do not believe it is an efficient use of Commission resources to pursue this  
7 allegation any further. Therefore, we recommend that the Commission exercise its prosecutorial  
8 discretion and dismiss the allegation that Tanonaka and the Committee may have violated  
9 2 U.S.C. §§ 434(b), 441a(f) or 441b(a) with respect to the \$4,000 Tanonaka loaned to his  
10 campaign on July 21, 2004. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

11           **B.     THE \$65,000 LOAN**

12           As previously discussed, the \$65,000 loan was funded with a \$70,000 payment Tanonaka  
13 received from the Koa Companies. Tanonaka asserts that the payment was made pursuant to a  
14 consulting agreement entered into between him and Dong, on behalf of the Koa Companies, on  
15 April 25, 2003. *See Consulting Agreement (Attachment 1)*. The Koa Companies are involved in  
16 the development and harvesting of koa and ohia lumber as well as construction and general  
17 contracting. Dong, as owner of the Koa Companies, purportedly retained Tanonaka in order to  
18 help his financially struggling businesses enter new markets, particularly markets in Japan and  
19 Korea.<sup>9</sup> Dong stated that he was formally introduced to Tanonaka in 2003 by a friend and  
20 business associate who believed that Tanonaka could help Dong's businesses gain a foothold in

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<sup>9</sup> In 2001, the Koa Companies began experiencing severe financial difficulties due in large part to a lender's attempts to foreclose on a koa forest Dong had recently purchased in South Hilo, Hawaii. In 2002, Dong filed a counter-suit in order to prevent the foreclosure and allow him to proceed with plans to apply to the state for a logging permit. *See Counterclaim by Hawaii Forest Preservation LLC, et al. at 5-6, Old Standard Life Insurance Company and Summit Securities, Inc. v. Hawaii Forest Preservation LLC, et al.*, No. 01-1-2403-08, 107 P.3d 1189 (Haw 2005).

1 these new markets because of his communication skills and numerous business connections in  
2 Asia.<sup>10</sup>

3 According to the consulting agreement, the Koa Companies agreed to pay Tanonaka  
4 \$10,000 monthly for five years, as well as a 5% commission on annual sales exceeding \$5  
5 million. In return, Tanonaka agreed to assist in selling, marketing and distributing koa and other  
6 timber products harvested from forestland owned by the Koa Companies to various individuals  
7 and entities around the world. See Consulting Agreement at ¶¶ 2 –3. Specifically, the agreement  
8 required Tanonaka to provide the following services: make introductions to potential purchasers  
9 of koa and ohia lumber, including those with authority to enter into binding contracts to purchase  
10 the harvested koa and ohia; collaborate with, and make recommendations to, the Koa Companies  
11 regarding operational, management, and protocol issues and; participate in meetings, discussions,  
12 and negotiations between the Koa Companies and any potential purchasers.<sup>11</sup> *Id.* ¶ 3.

13 According to Dong, Tanonaka began providing limited services at some point in the  
14 summer of 2003.<sup>12</sup> However, the information gathered in the course of the investigation  
15 indicates that the bulk of Tanonaka's consulting work for the Koa Companies was performed

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<sup>10</sup> The investigation demonstrated that Tanonaka had a number of credentials that made him especially well qualified to serve as a business consultant for a company expanding its business into the Far East. From October 2002 through August 2003, Tanonaka served as president of the Pacific Basin Economic Council ("PBEC"), an independent non-profit business association comprised of executives from economies of the Pacific Rim and beyond. Prior to holding that position, Tanonaka was a business consultant with the international consulting firm Grant Thornton. Additionally, Tanonaka, who speaks conversational Japanese, had lived and worked in East Asia for approximately seven years, first as a reporter at NHK-TV in Tokyo and then as an anchor for CNN Hong Kong. The investigation also indicated that Tanonaka was well known in Hawaii's Asian-American community as a result of his 2002 campaign for Lt. Governor.

<sup>11</sup> Neither Tanonaka nor Dong was able to recall how they came to agree on the specific terms of the agreement, including its length, the specific services Tanonaka was to perform, or the amount of the monthly payments and commission.

<sup>12</sup> In July 2003, Tanonaka, while still employed with PBEC, contacted Hawaii's Governor on behalf of Koa Timber, Inc. in order to promote the company's application for permission to harvest koa trees on the Big Island.

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1 between early 2004 and May 2004. Tanonaka's work for the Koa Companies can be broken  
2 down into two main categories. First, it appears that Dong and Tanonaka spent a significant  
3 amount of time preparing a strategy for obtaining entry into new Asian markets. According to  
4 Dong, Tanonaka's strategic input included the development of marketing materials for the  
5 company, including an executive summary and power point presentation for prospective  
6 investors and clients. Second, Tanonaka used his network of established contacts in the target  
7 region to introduce Dong to potential purchasers of the Koa Companies' timber and the South  
8 Hilo forestland.<sup>13</sup>

9 There is limited information regarding the precise amount of work performed by  
10 Tanonaka. Neither Dong nor Tanonaka tracked the number of hours Tanonaka devoted to  
11 consulting for the Koa Companies and Tanonaka stated he did not submit expense reports or  
12 billing statements. However, the investigation revealed numerous contacts between Tanonaka  
13 and Dong during the relevant time period and specific activities undertaken by Tanonaka on  
14 behalf of the Koa Companies. Tanonaka and Dong met frequently and spoke for hours on the  
15 telephone. Telephone records reflect that Dong and Tanonaka remained in frequent telephone

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<sup>13</sup> Tanonaka stated that he was particularly focused on securing an introduction between Dong and Young Ju Park, the chairman and CEO of Eagon Industrial Company, Ltd. ("Eagon"), the biggest timber distributor in Asia. The information we gathered indicates that Tanonaka arranged and conducted a series of meetings with Park in Seoul, Korea in mid-February 2004 for the purpose of eventually negotiating a contract with Eagon to distribute koa lumber throughout Asia. Dong expressed "great satisfaction with Tanonaka's introduction" and said he thought Tanonaka had made a "very good sales pitch." Tanonaka was responsible for closing the deal with Eagon, and over the next several months he continued to communicate with the company on Dong's behalf. Despite these efforts, Eagon informed Dong in May 2004 that they were not interested in adding Koa Companies' products to their line. Although a business alliance with Eagon was not achieved, Dong believed they came very close to a deal and considered Tanonaka's efforts to have been successful. In particular, Dong credited Tanonaka with his forming a friendship with Chairman Park, which he believes will eventually lead to a business association with Eagon. The investigation indicates that Tanonaka also attempted to develop several other clients for the Koa Companies in Japan and Indonesia. According to Tanonaka, his efforts included performing background research and providing Dong with the names of potential clients and contact information. For unknown reasons, Tanonaka's activities in generating clients from Japan and Indonesia did not lead to additional sales meetings, formal presentations, or result in Dong developing any new clients.

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1 contact throughout at least September 2004, although Tanonaka performed little, if any,  
2 consulting work after his congressional campaign began in early June 2004.<sup>14</sup>

3 According to Dong, the \$10,000 monthly fee required by the Consulting Agreement was  
4 justified based on Tanonaka's unique qualifications, including his prominence in the Asian-  
5 American community and his connections with business leaders in Asia. Dong stated that the  
6 work Tanonaka actually performed, *see supra* pp. 8-9, made the compensation paid to him  
7 "worth it." Despite his satisfaction, it appears that Dong's continuing financial problems made it  
8 impossible for him to pay Tanonaka the \$10,000 monthly fee as specified in the consulting  
9 agreement.<sup>15</sup> The investigation indicates that at some point in the early summer of 2004  
10 Tanonaka began pressuring Dong to pay him the money he was owed under the consulting  
11 agreement. According to Dong, Tanonaka became increasingly adamant about getting paid, and  
12 the two checks he issued through IDB on June 8, 2004 (\$3,000) and on August 28, 2004  
13 (\$70,000) were attempts to provide Tanonaka with at least a percentage of the consulting fees he  
14 was owed. Dong said that he paid Tanonaka "as little as he felt he could get away with." In  
15 total, Tanonaka received approximately half of what he was contractually owed at the time  
16 which, by the date of the August payment, was about \$160,000. As previously stated, Tanonaka  
17 used these funds to make the August 28, 2004 loan at issue.

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<sup>14</sup> Both Dong and Tanonaka admit that not all the time spent together or on the telephone was concerned exclusively with business. According to Dong, he considered Tanonaka a friend and volunteered on several occasions for Tanonaka's congressional campaign.

<sup>15</sup> According to Dong, during the pendency of the lawsuits referenced *supra* note 9, the Koa Companies' available resources were tied up financing his legal battles, attempting to gain state approval for his logging operation in the forest on South Hilo, and paying fines for past illegal logging. Dong also stated that funds were so scarce he usually just paid those consultants directly involved in the permitting process and oftentimes gave them only partial payments. Dong admitted that he typically avoided paying consultants and vendors until he could no longer tolerate their "badgering" or they threatened to sue him for the overdue payments.

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Commission regulations recognize that an individual may pursue gainful employment while a candidate for federal office. 11 C.F.R. § 100.33(b)(1). The regulations provide that payments "that are compensation [to a candidate] shall be considered contributions unless"

(A) The compensation results from *bona fide* employment that is genuinely independent of the candidacy;

(B) The compensation is exclusively in consideration of services provided by the employee as part of this employment; and

(C) The compensation does not exceed the amount of compensation that would be paid to any other similarly qualified person for the same work over the same period of time.

11 C.F.R. § 113.1(g)(6)(iii). The information obtained during the investigation indicates that the consulting arrangement Tanonaka had with Dong was *bona fide*, independent of Tanonaka's candidacy, and that any compensation he received was in consideration for, and commensurate with, services performed for the Koa Companies.

The contract between Tanonaka and Dong was ratified on April 25, 2003, more than a year before Tanonaka announced his candidacy for Congress. As previously noted, *supra* pp. 8-9, Tanonaka started performing consulting services for Dong at some point in July 2003 and continued to do so until approximately the end of May 2004. In addition, the circumstances surrounding Dong's hiring of Tanonaka suggest a specific need and purpose for the consulting position and indicate that Tanonaka's qualifications - including his established business contacts in, and personal connections with, Asia - were uniquely suited for that position. *See supra* note 10. These facts indicate that Tanonaka and Dong entered into a *bona fide* consulting arrangement that was independent of Tanonaka's candidacy. *See* 11 C.F.R. § 113.1(g)(6)(iii)(A).

Tanonaka also appears to have complied with the terms of the consulting agreement, which called for him to make introductions to potential purchasers; make recommendations

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1 regarding operational, management, and protocol issues; and participate in meetings, discussions,  
2 and negotiations with potential purchasers. *See supra* p. 9 and note 13. More importantly, it  
3 appears that Dong was more than satisfied with Tanonaka's performance and believed he and his  
4 companies received good value for the money paid to Tanonaka. Further, as previously  
5 discussed, although Tanonaka received the \$70,000 payment from Dong over a month after he  
6 became a candidate, the payment was made for services that he had rendered before he declared  
7 his candidacy pursuant to a consulting agreement entered into well over a year before he became  
8 a candidate. Accordingly, the evidence gathered during the investigation tends to show that the  
9 \$70,000 in compensation paid to Tanonaka in August 2004 was paid exclusively in consideration  
10 of services provided by him to the Koa Companies. 11 C.F.R. § 113.1(g)(6)(iii)(B).

11 Further, Dong believed the payment schedule was reasonable given the specialized  
12 qualifications Tanonaka brought to the difficult task of developing and executing a strategy to  
13 break into the East Asian lumber market. According to Dong, who had little or no experience  
14 with East Asia, Tanonaka was uniquely suited to spearhead this effort because he was "a  
15 communications expert" with "great leads" in that part of the world. *See supra* note 10. Dong  
16 was so pleased with Tanonaka's services that he stated Tanonaka "earned the \$10,000 [monthly  
17 fee] laid out in the agreement."<sup>16</sup>

18 The Commission has recognized that various intangible factors such as unique  
19 qualifications may be considered in determining the reasonableness of the amounts paid to  
20 individual (*e.g.*, a partner's anticipated future contributions to a law firm, ability to attract clients,  
21 results obtained for clients, value as a counselor to co-workers). *See* Advisory Opinions 1980-

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<sup>16</sup> As of May 31, 2004, when it appears Tanonaka ceased working for Dong, the Koa Companies were contractually obligated to have paid Tanonaka \$130,000. As detailed *supra* note 9, due to the Koa Companies financial difficulties, as of the \$70,000 payment in August 2004, Tanonaka received a little over half of what he was contractually owed

1 115 (Pierce O'Donnell) and 1979-58 (Carter/Mondale). Tanonaka's various activities on behalf  
2 of the Koa Companies cannot easily be reduced to hours spent or the number of clients he tried  
3 to land for the company. *See also* MUR 5620 (Talent for State Senate Committee) (No reason to  
4 believe that violations occurred in connection with payments made to a candidate by a law firm  
5 and a university, where, among other things, the information indicated that his high public  
6 profile as a four-term member of Congress factored into the amount of his compensation).

7 According to Dong, Tanonaka's value to the Koa Companies stemmed at least in part from his  
8 prior experience, including the contacts in the Asian business community he cultivated while  
9 working at PBEC, as well as the communication skills and level of recognition he developed  
10 while working in television and politics. And while there are no set "pay scales" for the type of  
11 work Tanonaka was contracted to perform, the monthly fee stipulated in the consulting  
12 agreement appears to have been within the range of what other management consultants,  
13 providing similar types of services as Tanonaka, would be paid over the same period of time.  
14 *See Management, Scientific and Technical Consulting Services*, from U.S. Bureau of Labor and  
15 Statistics, [www.bls.gov/oco/Cg/cgs037.htm#earnings](http://www.bls.gov/oco/Cg/cgs037.htm#earnings) (last accessed May 7, 2007) (The 2004  
16 average total compensation, which included salary plus bonus or profit sharing, for senior  
17 management consultants was \$123,305, for junior partners was \$191,664 and for senior partners  
18 was \$319,339). Therefore, the payments made to Tanonaka by Dong and the Koa Companies do  
19 not appear to have exceeded the amount of compensation paid to similarly qualified persons  
20 doing the same work would earn over the same period of time. *See* 11 C.F.R.

21 § 113.1(g)(6)(iii)(C).

22 Based on the foregoing, it appears that the \$70,000 payment to Tanonaka on August 24,  
23 2004 was *bona fide* compensation for consulting work, and his use of those personal funds to

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1 make a \$65,000 loan to the Committee on August 28, 2004 did not constitute a corporate  
2 contribution in violation of 2 U.S.C. § 441b(a). Accordingly, we recommend that the  
3 Commission take no further action with respect to the allegation that Dalton Tanonaka, the  
4 Committee, Kyle Dong, and Incentive Design Builders, Inc. violated 2 U.S.C. § 441b(a).

5 C. THE \$11,000 LOAN

6 Finally, we investigated the \$11,000 loan Tanonaka made to the Committee in October  
7 2004, for which he was criminally prosecuted. Tanonaka admitted in his criminal plea  
8 agreement that he solicited a \$25,000 loan from his brother-in-law, Burt Okihara, in order to  
9 cover both personal and campaign expenses, and that he falsely reported the source of his  
10 \$11,000 loan to the Committee as coming from his personal funds. *See* Plea Agreement, § 8,  
11 qq–tt (Attachment 2). Federal prosecutors did not prosecute Burt Okihara for making an  
12 excessive contribution to the Committee.

13 The evidence gathered during our investigation confirms that Burt Okihara and his wife  
14 Sandra Okihara, who is Tanonaka's older sister, were the source of the funds used by Tanonaka  
15 to make the \$11,000 loan to the Committee. Specifically, the Okiharas withdrew \$25,000 from a  
16 home equity line of credit and gave Tanonaka a \$25,000 cashiers check, which was made out to  
17 him. *See* Cashier's Check, dated October 8, 2004 (Attachment 3). Tanonaka then made an  
18 \$11,000 loan to the Committee with part of these funds.<sup>17</sup> Further, the investigation indicates  
19 that Tanonaka solicited these funds directly from Sandra Okihara.<sup>18</sup>

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<sup>17</sup> To date, Tanonaka has paid back \$13,000 of the \$25,000 loan he obtained from the Okiharas. *See* Undated Memorandum Signed by Dalton Tanonaka (Attachment 4)

<sup>18</sup> The plea agreement states that Tanonaka solicited these funds from Burt Okihara. *See* Plea Agreement, ¶ 8, qq. However, during the course of our investigation, Tanonaka and the Okiharas each asserted that Tanonaka dealt exclusively with Sandra Okihara in obtaining the \$25,000 loan. Sandra Okihara was never questioned during the criminal investigation, which may account for the apparent discrepancy between the description of Tanonaka's solicitation of the \$25,000 laid out in the plea agreement and the information we obtained during the investigation.

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1 Tanonaka admitted during the investigation that he actually solicited the \$25,000 loan  
2 with the express intention of utilizing a portion of those funds for his campaign. It appears that  
3 that Tanonaka led his sister and, through her, his brother-in-law to believe that he was in dire  
4 financial straits and needed those funds to cover living expenses for himself and his family.<sup>19</sup>  
5 The Okiharas knew that Tanonaka was unemployed and believed he was supporting himself and  
6 his family with savings and other personal assets. According to Mr. Okihara, he and his wife  
7 believed that Tanonaka would use the money to pay for necessities such as the mortgage and his  
8 daughter's school fees. Both the Okiharas claim that they did not know that any of the money  
9 they loaned Tanonaka was going to be used for the campaign. Mrs. Okihara stated quite  
10 emphatically that she would not have agreed to the loan had she known that her brother planned  
11 to use any part of the \$25,000 for his congressional campaign.

12 Because the investigation confirmed that Tanonaka knew that he intended to loan at least  
13 part of the money to his campaign at the time he requested a \$25,000 personal loan from his  
14 sister, it appears that Tanonaka knowingly and willfully accepted an excessive contribution in  
15 violation of 2 U.S.C. § 441a(f), and that the Committee failed to report the true source of the loan  
16 in violation of 2 U.S.C. § 434(b). However, considering that Tanonaka has served a prison  
17 sentence and paid a \$10,137.12 fine in connection with his criminal conviction for violating  
18 2 U.S.C. § 441a, and given the obvious difficulties of communicating with him in any  
19 meaningful way since he relocated to Djakarta, Indonesia, *see supra* note 4, we do not believe

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<sup>19</sup> According to Mrs. Okihara, Tanonaka called her during the evening of October 7, 2004 and said that he needed an immediate loan of \$25,000. Mrs. Okihara stated that Tanonaka sounded "pretty desperate" and told her "she was the only person he could turn to." Mrs. Okihara also said that Tanonaka specifically requested that the funds be given in the form of a cashier's check, which she assumed meant that giving a personal check would delay payment of his bills and cause more problems. She does not recall that Tanonaka mentioned his congressional campaign during that, or any other, conversation relating the \$25,000 loan.

1 that pursuing Tanonaka would be a good use of Commission resources. Therefore, we  
2 recommend that the Commission exercise its prosecutorial discretion and take no further action  
3 other than to send a letter of admonishment to Tanonaka and the Committee. *See Heckler v.*  
4 *Chaney*, 470 U.S. 821 (1985).

5 Further, because the investigation uncovered no evidence to suggest that Burt Okihara  
6 knew that any part of the \$25,000 loaned to Tanonaka would be used to benefit the Committee,  
7 we recommend that the Commission take no further action against Burt Okihara.

8 **V. RECOMMENDATIONS**

- 9 1. Dismiss the allegation that Dalton Tanonaka and Tanonaka for Congress and Dalton  
10 Tanonaka, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 441a(f) or  
11 441b(a) with the respect to the \$4,000 loan Dalton Tanonaka made Tanonaka for  
12 Congress.
- 13 2. Take no further action against Dalton Tanonaka and Tanonaka for Congress and  
14 Dalton Tanonaka, in his official capacity as treasurer, with respect to the \$65,000 loan  
15 Dalton Tanonaka made to Tanonaka for Congress.
- 16 3. Take no further action against Incentive Design Builders, Inc. and Kyle Dong.
- 17 4. Take no further action against Dalton Tanonaka and Tanonaka for Congress and  
18 Dalton Tanonaka, in his official capacity as treasurer, with respect to the \$11,000 loan  
19 Dalton Tanonaka made to Tanonaka for Congress other than to send an  
20 admonishment for violating 2 U.S.C. §§ 434(b) and 441a(f).
- 21 5. Take no further action against Burt Okihara.
- 22 6. Approve the appropriate letters.

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7. Close the file.

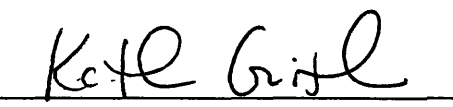
Thomasenia P. Duncan  
General Counsel

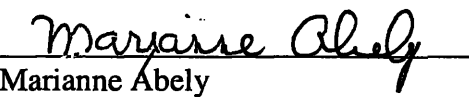
9/20/07

Date

BY:

  
Ann Marie Terzaken  
Acting Associate General Counsel  
for Enforcement

  
Kathleen Guith  
Assistant General Counsel

  
Marianne Abely  
Attorney

Attachments:

1. Consulting Agreement, dated April 25, 2003
2. Memorandum of Plea Agreement, dated July 21, 2005
- 3.
- 4.

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## CONSULTING AGREEMENT

This Consulting Agreement is made and entered into this 26 day of April, 2003, by and between DALTON TANONAKA (herein "Tanonaka"), and HAWAII FOREST PRESERVATION, LLC, a Hawaii limited liability company, KOA TIMBER, INC., a Hawaii corporation, INCENTIVE DESIGN BUILDERS, INC., and K&K INVESTMENTS, LTD., a Hawaii corporation (herein collectively called "Koa Companies").

WHEREAS, HAWAII FOREST PRESERVATION, LLC, currently owns approximately 13,000 acres of land on the Island of Hawaii, State of Hawaii, which grows and contains koa trees and ohia trees (herein the "Koa Forest");

WHEREAS, the Koa Companies desire to harvest, cut, market and sell the koa trees and ohia trees contained Koa Forest to interested third parties;

WHEREAS, the Koa Companies are currently in the process of applying for, and seeking approval from the various governmental agencies allowing the Koa Companies the ability to harvest the Koa Forest;

WHEREAS, the Koa Companies, subject to, among other things, the approval of the various governmental agencies, desire to sell, market and otherwise distribute the cut koa and ohia to various markets around the world;

WHEREAS, one of the markets that the Koa Companies desire to establish a presence is in the far east, including markets in Japan and Korea;

WHEREAS, Tanonaka has, over the years, established relationships with various individuals and companies who have expressed an interest in purchasing the koa and ohia which will ultimately be harvested by the Koa Companies from the Koa Forest;

WHEREAS, the Koa Companies desire to retain the services of Tanonaka, on a consulting basis (and not as an employee) to provide the Koa Companies with, among other things, assistance in selling, marketing and distributing the koa and ohia which is ultimately harvested by the Koa Companies to various individuals and companies around the world;

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other valuable consideration, the value and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **EXCLUSIVE CONSULTING SERVICES:** Tanonaka agrees to provide consulting services to the Koa Companies on an exclusive basis for the Term of this Agreement. During the Term of this Agreement, Tanonaka agrees that he shall not sell, market, distribute or otherwise represent any other person, company or entity

ATTACHMENT  
Page 1 of 8

United States, that is in the same or similar business, regardless of the type of wood or lumber sold. The Parties agree, however, that Tanonaka may represent any other person, company or entity which does not compete with, or is involved in a business similar to the Koa Companies.

2. CONSULTING FEE: The Koa Companies agrees to pay to Tanonaka a consulting fee of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) per month, for the entire term of this Agreement. The consulting fee shall be guaranteed, and shall not be dependent upon a successful completion of sales, or a percentage of sales. In the event Tanonaka has been instrumental in securing sales to a person, company or entity in excess of FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) on an annual basis, then the Koa Companies agree to pay to Tanonaka, in addition to the minimum consulting fee of \$10,000.00 per month, an additional consulting fee of five percent (5%) of all annual sales in excess of \$5,000,000.00.

3. OBLIGATIONS OF THE PARTIES:

3.1. Tanonaka Obligations. Tanonaka shall provide the following services ("Services") to the Koa Companies:

3.1.1. Introduction and Marketing. Tanonaka shall make all necessary introductions of potential interested purchasers to the Koa Companies who shall work with Tanonaka to sell and market the koa and ohia lumber to these potential purchasers. Tanonaka agrees to make contact with company presidents and representatives who have such authority to enter into a final binding contract to purchase the koa and ohia harvested from the Koa Forest.

3.1.2. Operations. Tanonaka shall collaborate with, and make recommendations to, the Koa Companies regarding operational and management issues, as well as the proper protocol to be practiced by the Koa Companies when meeting with the various companies and/or individuals introduced by Tanonaka.

3.1.3. Promotion. Tanonaka shall personally participate in all meetings, discussions and negotiations between the Koa Companies and any potential purchaser, unless directed otherwise by the Koa Companies.

3.1.4 Personal Services. This Agreement is a personal service agreement and Tanonaka agrees to personally perform all services to be provided. Tanonaka further agrees that he shall not delegate or otherwise assign any portion of the services covered by this Agreement, unless agreed to in writing by the Koa Companies.

4. KOA COMPANIES RIGHTS:

4.1. Management. The Koa Companies retain the right to manage and make ultimate decisions on all corporate matters, including the sales price(s) and quantity sold, for the lumber, the hiring and termination of any and all employees, the

day to day operations of the companies an all other corporate matters which decisions, shall, be in its absolute and sole discretion.

4.2. EXCLUSIVITY: Tanonaka agrees that during the period over which it is (or is supposed to be) providing consulting services and for one (1) year thereafter, Tanonaka will not engage in any activity that is in direct competition with the Koa Companies in the State of Hawaii, and Tanonaka will not assist any other person or organization in directly competing or in preparing to directly compete with any business of Koa Companies in the State of Hawaii.

5. PUBLIC RELATIONS: Each party agrees to cooperate, when possible, for all public relations events relating to the purposes of this Agreement. Neither party shall prepare any form of announcement or press release relating to the purposes of this Agreement without the express consent of the other party, which consent shall not be unreasonably withheld.

6. CONFIDENTIALITY: Tanonaka and the Koa Companies agree that all information (whether in writing, orally or in any other format) disclosed by each of them to the other during the negotiation of this Agreement or to be disclosed during the term of this Agreement, including but not limited to, the specific terms of this Agreement, business plans, product ideas, marketing concepts, financial information and projections, shall constitute "Confidential Information"; provided, however, Confidential Information does not include information that is or becomes publicly known through no wrongful act of either party (or any of its employees), has been approved for release by written authorization of the originating party, or has been disclosed pursuant to a requirement of a government agency or of law. During the term of this Agreement and at all times thereafter, the party to whom Confidential Information has been imparted shall maintain such information as confidential and shall not disclose or permit the same to be disclosed to any person or entity. Each party shall use its best efforts to take all reasonable steps to minimize the risks of disclosure of Confidential Information. Each of the parties further agree that the unauthorized disclosure by it of Confidential Information received from the other will cause irreparable harm and significant injury to the other which may be difficult to ascertain. Accordingly, each party agrees that the other shall be entitled to equitable relief, including, without limitation, an immediate injunction enjoining any breach by it of this Section, in addition to all other remedies available to such party at law or in equity. The parties agree that this Section shall survive the termination or expiration of this Agreement.

#### 7. EXPENSES AND GET:

7.1 Expenses. The Koa Companies shall reimburse Tanonaka for reasonable expenses incurred for transportation, food and lodging related to his services under this Agreement, provided that such expenses do not exceed a budgeted amount to be agreed upon by the parties in advance in writing on an annual basis.

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7.2 GET. Tanonaka shall be solely responsible for the payment of any and all applicable taxes on its receipts under this Agreement, including, but not limited to, general excise tax.

## 8. REPRESENTATIONS AND WARRANTIES

8.1. Representations and Warranties of Tanonaka: Tanonaka represents and warrants the Koa Companies that (i) he has full power and authority, and has taken all action necessary, to execute and deliver this Agreement and to fulfill its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by it and constitutes its legal, valid and binding obligations, enforceable against it in accordance with the respective terms hereof (except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general applicability affecting enforcement of creditors' rights generally) or by a court's discretion in relation to equitable remedies.

8.2. Representations and Warranties of the Koa Companies: The Koa Companies represent and warrant to Tanonaka that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Agreement and to fulfill its obligations hereunder, (ii) the making and performance by it of this Agreement does not and will not violate any law or regulation applicable to it, its certificate of incorporation, by-laws or other organizational documents or any other agreement to which it is a party or by which it is bound, (iii) this Agreement has been duly executed and delivered by it and constitutes its legal, valid and binding obligations, enforceable against it in accordance with the respective terms hereof (except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general applicability affecting enforcement of creditors' rights generally, or by a court's discretion in relation to equitable remedies), and (iv) all approvals, authorizations or other actions by, or filings with, any governmental authority or other person or entity necessary for the validity or enforceability of its obligations under this Agreement have been obtained.

8.3. DISCLAIMER: EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY, AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS ANY, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING SUCH PARTY'S PRODUCTS, SERVICES OR WEB SITE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

## 9. TERM; TERMINATION

9.1 Term. The term of this Agreement shall be for an initial period of FIVE (5) years from the Effective Date of this Agreement (the "Initial Period") and shall continue thereafter, unless and until terminated sooner as provided below. The term of this Agreement may be extended for up to two (2), five-year terms by the Koa Companies

upon six (6) months' notice to Tanonaka prior to the end of the Initial Period or any subsequent term.

9.2 Termination. This Agreement may be terminated (i) upon thirty (30) days written notice by a party if the other party defaults in the performance of any of its material obligations contained in this Agreement and if the default is not cured during such notice period, or (ii) upon ninety (90) days written notice by the Koa Companies upon the death or disability of Tanonaka, or (iii) by one party immediately at any time, without notice, if any proceeding is commenced or any action taken or an order is made or an effective resolution is passed for the dissolution, winding up, or bankruptcy of the other party or, where relevant, for the appointment of a liquidator, liquidation committee, receiver, administrator, trustee or similar officer of the other party of all or a substantial part of its business or its assets.

## 10. INDEMNIFICATION:

10.1. Indemnification of Koa Companies: Tanonaka shall indemnify, hold harmless and defend the Koa Companies from and against any and all claims, liabilities, losses, damages, expenses and costs (including, without limitation, legal fees and costs) arising out of or relating to (i) Tanonaka's breach of any of its representations and warranties set forth herein, (ii) Tanonaka's breach of any of its obligations hereunder, or (iii) any negligence or intentional wrongdoing of Tanonaka, or any employee or agent thereof. In addition, Tanonaka shall have full responsibility for applicable withholding taxes for all compensation paid to Tanonaka, its agents or its employees under this Agreement, and for compliance with all applicable labor and employment requirements with respect to Tanonaka's form of business organization, and Tanonaka's, agents and employees, including state worker's compensation insurance coverage requirements and any US immigration visa requirements. Tanonaka agrees to indemnify, defend and hold the Koa Companies harmless from any liability for, or assessment of, any claims or penalties with respect to such withholding taxes, labor or employment requirements, including any liability for, or assessment of, withholding taxes imposed on the Koa Companies by the relevant taxing authorities with respect to any compensation paid to Tanonaka.

10.2. Indemnification of Tanonaka: The Koa Companies shall indemnify, hold harmless and defend Tanonaka from and against any and all claims, liabilities, losses, damages, expenses and costs (including, without limitation, legal fees and costs) arising out of or relating to (i) the Koa Company's breach of any of its representations and warranties set forth herein, (ii) the Koa Company's breach of any of its obligations hereunder, or (iii) any negligence or intentional wrongdoing of the Koa Companies, or any employee or agent thereof.

## 11. GENERAL

11.1 Review Rights: Both parties shall retain complete, clear and accurate records regarding the services and compensation provided under the terms of this Agreement. Either party shall have the right, upon not less than ten (10) days prior

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written notice to the other party and no more than once per year during the term of this Agreement, to cause an independent Certified Public Accountant to inspect and review, during the party's normal business hours, all relevant records of the party pertaining to the obligations set forth in this Agreement.

11.2. Notices: All notices and other communications between the parties required or permitted hereunder shall be in writing and shall be deemed to have been duly given upon receipt off and delivery; certified or registered mail, return receipt requested; or telecopy transmission with confirmation of receipt.

11.3. No Waiver; Cumulative Remedies: No failure or delay in the exercise, by either party, of any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

11.4. Counterparts: This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Transmission by facsimile or other electronic means of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

11.5. Severability: Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11.6. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii without reference to the conflict of law principles thereof.

11.7. Jurisdiction: Any judicial proceeding brought with respect to this Agreement must be brought in a court of competent jurisdiction in the State of Hawaii located in the County of Honolulu or in the United States District Court of Hawaii, and, by execution and delivery of this Agreement, each party (i) accepts, generally and unconditionally, the exclusive jurisdiction of such courts and any related appellate court, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement, (ii) irrevocably waives any objection it may now or hereafter have as to the venue of any such suit, action or proceeding brought in such a court or that such court is an inconvenient forum and (iii) agrees that service of process in any such action or proceeding may be effected (A) by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to its address set forth in this Agreement or (B) in any other manner permitted by law.

11.8. Headings: The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

11.9. Entire Agreement: This Agreement embodies the entire agreement and understanding of the parties hereto with respect to the subject matter contained herein and supersedes all prior agreements and understandings between the parties with respect to such subject matter.

11.10. Amendments; Waivers; Binding Effect: Any amendments to, or waivers of; this Agreement shall be in writing and signed by both parties or, in the case of a waiver, by the party waiving compliance. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11.11. Assignment. Neither party may assign this Agreement without the prior written consent of the other party, and any attempt by a party to assign this Agreement without such consent shall be null and void; provided, however, that either party shall be entitled to assign this Agreement without the other party's prior written consent in connection with a merger of such party with or into, or sale of all or substantially all of the assets of such party to, an entity that is not a direct competitor of the other party.

11.12. No Agency: No agency, partnership, joint venture, or employment relationship shall be created or inferred by the existence or performance of this Agreement, and neither party shall have any authority to bind the other in any respect whatsoever.

11.13. Survival: In addition to those provisions herein which expressly survive the termination of this Agreement, the provisions of this Agreement that would reasonably be expected to survive the completion, expiration, termination or cancellation of this Agreement shall do so.

11.14. Force Majeure: Either party hereto shall be excused from any delay or failure in performance hereunder, except that the payment of monies due and payable hereunder may be extended for a period not to exceed one (1) year, caused by reason of any occurrence or contingency beyond its reasonable control, including, without limitation, acts of God, fires, floods, wars, civil disturbance, sabotage, accidents or labor disputes. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay.

11.15 Limitation of Liability: IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY IN CONNECTION WITH THIS AGREEMENT FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR RELIANCE DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE OR UNDER ANY OTHER LEGAL THEORY, WHETHER FORESEEABLE OR NOT AND



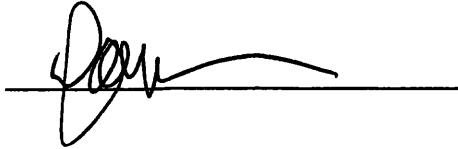
WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOT WITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. BOTH PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK AND ARE REFLECTED IN THE FEES AGREED UPON BY THE PARTIES.

11.16 Drafts Not Binding: The delivery and exchange of unsigned copies of this Agreement shall not give rise to a legally binding contract. Neither party shall be bound to the other unless and until this Agreement is executed by both the Koa Companies and Tanonaka and signed copies or signature pages are exchanged by the parties.

THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE DATE FIRST WRITTEN ABOVE.

"Tanonaka"

DALTON TANONAKA



"The Koa Companies"

HAWAII FOREST PRESERVATION, LLC  
a Hawaii limited liability company

By   
Its:

KOA TIMBER, INC., a Hawaii corporation

By   
Its:

INCENTIVE DESIGN BUILDERS, INC., a  
Hawaii corporation

By   
Its:

K & K INVESTMENTS, LTD., a Hawaii  
Corporation

By   
Its:

ATTACHMENT 1  
Page 8 of 8

EDWARD H. KUBO, JR. #2499  
United States Attorney  
District of Hawaii

RONALD G. JOHNSON #4532  
Chief, Major Crimes

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Honolulu, Hawaii 96850  
Telephone: 541-2850  
Facsimile: (808) 541-2958  
Email: [michael.purpura@usdoj.gov](mailto:michael.purpura@usdoj.gov)

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COMMISSION  
OFFICE OF GENERAL  
COUNSEL

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, )

CR. NO. 05-00304 HG

Plaintiff, )

MEMORANDUM OF PLEA AGREEMENT;  
EXHIBIT "A"

vs. )

DALTON I. TANONAKA, )

DATE: July 21, 2005

TIME: 9:00 a.m.

Defendant. )

JUDGE: Kevin S.C. Chang

MEMORANDUM OF PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the UNITED STATES OF AMERICA, by its attorney, the United States Attorney for the District of Hawaii, and the Defendant, DALTON I. TANONAKA, and his attorney, Michael Green, Esq., have agreed upon the following:

1. Defendant acknowledges that he has been charged in an Information with violating Title 18, United States Code, Sections 1001 and 1014, and Title 2, United States Code, Sections

441a and 437g(d). A true and correct copy of that Information is attached hereto as Exhibit "A."

2. Defendant has read the charges against him contained in the Information, and those charges have been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crimes with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to Counts 1-4 of the Information, charging him with making false statements on loan applications, making false statements to the United States House of Representatives ("House of Representatives"), and accepting illegal campaign contributions.

5. Defendant agrees that this Memorandum of Plea Agreement shall be filed and become part of the record in this case.

6. Defendant enters this plea because he is in fact guilty of the crimes as charged in the Information, and agrees that this plea is voluntary and not the result of force or threats.

7. Defendant understands that the penalties for the offenses to which he is pleading guilty include: (1) for making false statements on a loan application, up to thirty years of imprisonment and a fine of up to \$1,000,000, plus a term of supervised release of not more than five years; (2) for making

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false statements to the House of Representatives, up to five years of imprisonment and a fine of up to \$250,000, plus a term of supervised release of not more than three years; and (3) for accepting illegal campaign contributions, up to one year of imprisonment and a fine of up to \$100,000, plus a term of supervised release of not more than one year. There is no restitution in this matter.

In addition, the Court must impose a \$325 special assessment (\$100 each for Counts 1-3 and \$25 for Count 4). Defendant agrees to pay \$325 to the District Court's Clerk's Office, to be credited to said special assessments, before the commencement of any portion of sentencing. Defendant acknowledges that failure to make such full advance payment in a form and manner acceptable to the prosecution will allow, though not require, the prosecution to withdraw from this agreement at its option.

8. Defendant admits the following facts and agrees that they are not a detailed recitation, but merely an outline of what happened in relation to the charges to which Defendant is pleading guilty:

BACKGROUND - LT. GOVERNOR AND CONGRESSIONAL CAMPAIGNS

a. In November 2001, defendant Tanonaka announced his intention to seek the Republican nomination for Lt. Governor

of Hawaii in 2002 and formed the "Dalton for Hawaii Campaign" ("DFHC").

b. At the time Tanonaka ran for Lt. Governor, the State of Hawaii campaign laws set the contribution limit for any individual donor at \$6,000. See Haw. Rev. St. § 11-204.

c. Under the laws of the State of Hawaii, Tanonaka was able to receive loans from individuals (not including the candidate or his immediate family) in an aggregate amount of \$10,000, and the campaign was required to report to the State of Hawaii Campaign Spending Commission ("CSC") all loans in excess of \$100. See Haw. Rev. St. § 11-205.6.

d. The Hawaii campaign laws further state that once the \$10,000 limit is reached, the candidate may not receive or accept any additional loans until the \$10,000 is repaid in full, and that failure to document any loans shall cause the CSC to view the loans as contributions. See Haw. Rev. St. § 11-205.6.

e. On September 21, 2002, Tanonaka lost the Republican Primary election for Lt. Governor.

f. In June 2004, Tanonaka announced his intention to seek the Republican nomination for Member of the House of Representatives from Hawaii's 1<sup>st</sup> Congressional District and formed the "Tanonaka for Congress Campaign" ("TFCC").

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g. At the time Tanonaka ran for Congress, the federal campaign laws set the contribution limit for any individual donor at \$2,000. See 2 U.S.C. § 441a. The federal campaign laws define "contribution" to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office." 2 U.S.C. § 431(8)(A)(i). A candidate for any federal office may not knowingly accept any contribution in excess of the limits set by law. See 2 U.S.C. § 441a(f). Moreover, a candidate for federal office must report all contributions to the Federal Election Commission ("FEC"). See 2 U.S.C. § 434.

h. On September 18, 2004, Tanonaka, running unopposed, won the Republican Primary election for Member of Congress from Hawaii's 1<sup>st</sup> Congressional District.

i. On November 2, 2004, Tanonaka lost the general election for Member of Congress from Hawaii's 1<sup>st</sup> Congressional District.

LOANS RECEIVED DURING LT. GOVERNOR CAMPAIGN

Loans From "R.H." and "C.T."

j. On June 28, 2002, Tanonaka deposited \$48,000 into his personal checking account. The deposit consisted of two checks, one a \$33,000 check drawn on R.H.'s account with a notation for "Personal Loan," and the other a \$15,000 check drawn

on the account of C.T. with a notation for "Loan." At the time Tanonaka received the funds from R.H. and C.T., his personal checking account showed a balance of \$1,492.16.

k. Also on June 28, 2002, Tanonaka wrote a personal check payable to DFHC in the amount of \$45,000.

l. In filings with the CSC, Tanonaka reported the \$45,000 payment as a personal loan to his campaign, with no mention of R.H. and C.T. as the true sources of the funds.

m. Within two weeks, on July 9, 2002, Tanonaka repaid the \$15,000 loan from C.T. by personal check. Earlier that day, Tanonaka deposited into his personal account a \$25,000 check from DFHC. He later reported this to the CSC as a personal loan repayment. Prior to this deposit, Tanonaka's personal checking balance was \$4,521.72.

n. Between July 2002 and August 2003, Tanonaka made a number of partial loan repayments to R.H. The final transaction relating to this loan occurred on March 9, 2004, when Tanonaka made a \$1,300 payment to R.H. for "Interest on Personal Loan." As of January 1, 2003, Tanonaka owed R.H. \$16,500.

Loan from "M.F."

o. On September 19, 2002, two days prior to the Republican Primary for Lt. Governor, Tanonaka deposited into his personal account a \$25,000 check from M.F. dated September 18,

2002. At the time Tanonaka deposited the check, his personal checking balance was -\$472.59.

p. Also on September 19, 2002, Tanonaka drew a cashier's check from his personal checking account payable to DFHC in the amount of \$24,000. At the time Tanonaka made this deposit to DFHC, the campaign's account balance was -\$7,899.69.

q. In filings with the CSC, Tanonaka reported the \$24,000 payment as a personal loan to the campaign, again with no mention of M.F. as the true source of the funds.

r. As of January 1, 2003, Tanonaka owed M.F. at least \$21,000 as repayment for this loan.

TANONAKA'S 2003 BANK LOANS

Central Pacific Bank Loan #8100271270

s. On February 21, 2003, Tanonaka signed a Uniform Residential Loan Application with Central Pacific Bank ("CPB"), loan number 8100271270, for a \$950,000 mortgage loan refinancing of his primary residence.

t. When Tanonaka signed the loan application, Tanonaka certified that the information was true and correct, and acknowledged that any intentional or negligent misrepresentation of the information could result in criminal penalties.

u. Although the application asked Tanonaka to list all outstanding debts, Tanonaka failed to disclose as liabilities

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the outstanding personal loans with R.H., which had a balance of \$16,500, and with M.F., which had a balance of at least \$21,000.

v. On February 28, 2003, Tanonaka paid R.H. \$1,500 by check drawn on Tanonaka's personal account. The check indicated "loan repayment" on its face.

Central Pacific Bank Loan #8100271580

w. On March 11, 2003, Tanonaka signed a Uniform Residential Loan Application with CPB, loan number 8100271580, for a \$195,000 mortgage loan refinancing of a condominium jointly held with another person.

x. When Tanonaka signed the loan application, Tanonaka certified that the information was true and correct, and acknowledged that any intentional or negligent misrepresentation of the information could result in criminal penalties.

y. Although the application asked Tanonaka to list all outstanding debts, Tanonaka failed to disclose as liabilities the outstanding personal loans with R.H., which had a balance of \$15,000, and with M.F., which had a balance of at least \$21,000.

Central Pacific Bank Loan #8100251377

z. On March 20, 2003, Tanonaka completed a CPB Consumer Credit Application, loan number 8100251377, for a \$50,000 professional line of credit loan.

aa. When Tanonaka signed the loan application, he certified that the information was true and correct.

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bb. Although the form asked Tanonaka to disclose "Loans Payable to Others" within the "Liabilities" section, Tanonaka failed to disclose the outstanding personal loans with R.H., which had a balance of \$15,000, and with M.F., which had a balance of at least \$21,000.

cc. By April 14, 2003, CPB approved Tanonaka's application. Tanonaka utilized this line of credit to write a \$10,000 check to M.F., dated April 14, 2003, and a \$5,000 check to R.H., dated April 17, 2003. Both of these checks referenced "Personal Loan Repayment."

Central Pacific Bank Loan #8100264703

dd. On July 28, 2003, Tanonaka submitted a signed a CPB Loan Application, loan number 8100264703, for a \$50,000 home equity line of credit loan.

ee. When Tanonaka signed the loan application, he certified that the information was correct.

ff. The application contained a section under the heading "The Following Are All My (Our) Debts Or Open Accounts Including Joint Accounts." In this section, Tanonaka listed his mortgages and line of credit, but failed to disclose as liabilities the outstanding personal loans with R.H., which had a balance of \$10,000, and with M.F., which had a balance of at least \$11,000.

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gg. On approximately August 25, 2003, CPB approved the home equity line of credit. That day Tanonaka opened a checking account at CPB, and received a \$40,000 disbursement from the home equity line of credit, loan number 8100264703. On August 26, 2003, Tanonaka wrote M.F. a check from this account in the amount of \$10,000. The next day, August 27, 2003, Tanonaka wrote R.H. a check from this account in the amount of \$10,000. Tanonaka included the annotation "Personal Loan Balance" on each check.

CONSULTING AGREEMENT WITH "K.D."

hh. On approximately April 25, 2003, Tanonaka entered into a "Consulting Agreement" with a series of companies owned by K.D., including IDB. The Agreement indicates that K.D. owns several thousand acres of forest in Hawaii, and sought to harvest the koa and ohia wood from these lands and to sell the wood to buyers in Asia, specifically Japan and Korea. As part of the Agreement, Tanonaka agreed to assist K.D. in the sales, marketing, and distribution of the harvested wood. K.D. agreed to pay Tanonaka \$10,000 per month (plus commission) for the duration of the Agreement, which the parties set at five years.

ii. Due to financial problems, K.D. was unable to pay Tanonaka fully or timely. In total, Tanonaka received the following payments under the Agreement from K.D. or IDB:

<u>Check Date</u>	<u>Payer</u>	<u>Amount</u>
June 8, 2004	IDB	\$ 3,000
August 27, 2004	IDB	\$70,000
November 23, 2004	K.D.	\$10,000.

jj. On August 28, 2004, Tanonaka deposited the \$70,000 check into his personal checking account. At the time Tanonaka made this deposit, his personal checking balance was \$9.97.

kk. The same day, Tanonaka wrote a check from this account to the TFCC in the amount of \$65,000, which he classified as a loan to the campaign. At the time he loaned the campaign these funds, the balance in the TFCC account was \$1,955.46.

ll. Two days later, on August 30, 2004, TFCC wrote Tanonaka a check for \$22,500, with the annotation "Loan Repayment."

HOUSE OF REPRESENTATIVES FINANCIAL DISCLOSURE STATEMENT

mm. On July 19, 2004, in connection with his Congressional candidacy, Tanonaka completed, signed, and filed a House of Representatives Financial Disclosure Statement, Form B, and attached schedules. The Office of the Clerk, House of Representatives, received the document on July 26, 2004.

nn. The form required Tanonaka to list the source, type, and amount of all earned income, from any source, totaling \$200 or more from the period of January 1, 2003 through the date

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of filing (the "reporting period"). Tanonaka listed \$4,762.22 as salary in 2004 from Big Wave Honolulu LLC, which is a business owned by Tanonaka, and \$173,635.92 as salary in 2003 from the Pacific Basin Economic Council. Tanonaka failed to mention any payment from IDB, although he received a \$3,000 payment slightly more than one month prior to the filing of the document.

oo. The form also required Tanonaka to report liabilities of over \$10,000 owed to any one creditor at any time during the reporting period. (Emphasis in form.) Tanonaka failed to list his debts to R.H. and M.F., although both were over \$10,000 through at least April 2003 (and were exactly \$10,000 as of August 2003).

pp. The form required Tanonaka to list all positions, compensated or uncompensated, held from January 1, 2002 through the filing date as an officer, director, . . . or consultant of any corporation, firm, partnership, or other business enterprise. (Emphasis added.) Tanonaka failed to disclose his consulting agreement with K.D., which was in effect from April 2003 through the date of filing.

"B.O." LOAN

qq. In October 2004, Tanonaka solicited a \$25,000 personal loan from B.O. Tanonaka stated that it was "crunch time" in the Congressional election, and that he needed the money for personal and campaign expenses.

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rr. On October 8, 2004, B.O. purchased a cashier's check in the amount of \$25,000, payable to Tanonaka. That same day, Tanonaka deposited the cashier's check into his personal checking account. At the time of the deposit, the balance of Tanonaka's personal checking account was \$34.64.

ss. Also on October 8, 2004, Tanonaka deposited \$11,000 from his personal checking account into the account of TFCC. At the time of the \$11,000 deposit, the balance of the TFCC account was \$3,179.20.

tt. In filings with the FEC, Tanonaka reported the \$11,000 payment as a personal loan to his campaign, with no mention of B.O. as the true source of the funds.

9. Pursuant to CrimLR32.1(a) of the Local Rules of the United States District Court for the District of Hawaii, the parties agree that the charges to which the Defendant is pleading guilty adequately reflect the seriousness of the actual offense behavior and that accepting this Agreement will not undermine the statutory purposes of sentencing.

10. Pursuant to CrimLR32.1(b) of the Local Rules of the United States District Court for the District of Hawaii and Section 6B1.4 of the Sentencing Guidelines, the parties stipulate to the following for the purpose of the sentencing of Defendant in connection with this matter: Defendant agrees that the

illegal portion of the contribution that he solicited and accepted from B.O. is \$9,000.

11. The parties agree that notwithstanding the parties' Agreement herein, the Court is not bound by any stipulation entered into by the parties but may, with the aid of the presentence report, determine the facts relevant to sentencing.

12. Pursuant to Section 6B1.4 of the Sentencing Guidelines, the parties identify the following facts that are in dispute for the purpose of sentencing of Defendant in connection with this matter: None known.

13. The Defendant is aware that he has the right to appeal the sentence imposed under Title 18, United States Code, Section 3742(a). Defendant knowingly waives the right to appeal, except as indicated in subparagraph "b" below, any sentence within the maximum provided in the statute(s) of conviction or the manner in which that sentence was determined on any of the grounds set forth in Section 3742, or on any ground whatever, in exchange for the concessions made by the prosecution in this plea agreement.

a. The Defendant also waives his right to challenge his sentence or the manner in which it was determined in any collateral attack, including, but not limited to, any motion brought under Title 28, United States Code, Sections 2255

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and/or 2241, except that Defendant may make such a challenge (1) as indicated in subparagraph "b" below, or (2) based on a claim of ineffective assistance of counsel.

b. If the Court imposes a sentence greater than specified in the guideline range determined by the Court to be applicable to the Defendant, the Defendant retains the right to appeal the portion of his sentence greater than specified in that guideline range and the manner in which that portion was determined under Section 3742 and to challenge that portion of his sentence in a collateral attack.

c. The prosecution retains its right to appeal the sentence and the manner in which it was determined on any of the grounds stated in Title 18, United States Code, Section 3742(b).

14. The Defendant understands that the District Court in imposing sentence will consider the provisions of the Sentencing Guidelines. The Defendant agrees that there is no promise or guarantee of the applicability or nonapplicability of any Guideline or any portion thereof, notwithstanding any representations or predictions from any source.

15. The Defendant understands that this Agreement will not be accepted or rejected by the Court until there has been an opportunity by the Court to consider a presentence report, unless the Court decides that a presentence report is unnecessary. The



Defendant understands that the Court will not accept an agreement unless the Court determines that the remaining charges adequately reflect the seriousness of the actual offense behavior and accepting the agreement will not undermine the statutory purposes of sentencing.

16. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. If Defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by a judge sitting without a jury. The Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the Defendant, the prosecution and the judge all must agree that the trial be conducted by the judge without a jury.

b. If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the Defendant is presumed innocent, and that it could not convict him unless, after hearing

all the evidence, it was persuaded of his guilt beyond a reasonable doubt.

c. If the trial is held by a judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not he or she was persuaded of the Defendant's guilt beyond a reasonable doubt.

d. At a trial, whether by a jury or a judge, the prosecution would be required to present its witnesses and other evidence against the Defendant. Defendant would be able to confront those prosecution witnesses and his attorney would be able to cross-examine them. In turn, Defendant could present witnesses and other evidence on his own behalf. If the witnesses for the Defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

e. At a trial, the Defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify.

17. Defendant understands that by pleading guilty, he is waiving all of the rights set forth in the preceding paragraph. Defendant's attorney has explained those rights to him, and the consequences of the waiver of those rights.

18. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor

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agreement reached, other than those set forth in this Agreement, to induce Defendant to plead guilty.

19. Should the Court refuse to accept this Agreement, it is null and void and neither party shall be bound thereto. The parties understand that the Court's rejection of any stipulation between the parties does not constitute a refusal to accept this Agreement since the Court is expressly not bound by stipulations between the parties.

20. Defendant understands that the prosecution will apprise the Court and the United States Probation Office of the nature, scope and extent of Defendant's conduct regarding the charges against him, related matters, and any matters in aggravation or mitigation relevant to the issues involved in sentencing.

21. In consideration of his plea of guilty to the Information, the Defendant will not be further prosecuted criminally by this Office (except for criminal tax violations as to which this Office cannot, and does not, make any agreement) for the conduct charged in the Information. However, nothing in this Agreement waives or limits in any way the authority of the FEC to seek civil penalties or other administrative remedies for

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violations of the Federal Election Campaign Act pursuant to  
2 U.S.C. § 437g(a).

DATED: Honolulu, Hawaii, July 21, 2005.

AGREED:

EDWARD H. KUBO, JR.  
United States Attorney  
District of Hawaii

  
DALTON I. TANONAKA  
Defendant

  
RONALD G. JOHNSON  
Assistant U.S. Attorney  
Chief, Major Crimes

  
MICHAEL J. GREEN  
Attorney for Defendant

  
MICHAEL M. PURPURA  
Assistant U.S. Attorney

United States v. Dalton I. Tanonaka  
Cr. No. 05-00304 HG  
"Memorandum of Plea Agreement"

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EDWARD H. KUBO, JR. #2499  
United States Attorney  
District of Hawaii

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Attorneys for Plaintiff  
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 05-00304 HG
	)	
Plaintiff,	)	
	)	INFORMATION
vs.	)	
	)	[18 U.S.C. §§ 1001 and 1014,
DALTON I. TANONAKA,	)	and 2 U.S.C. §§ 441a
	)	and 437g(d)]
Defendant.	)	

INFORMATION

COUNT 1

(False Statement on Loan Application)

The United States Attorney charges:

1. On or about March 20, 2003, in the District of Hawaii, DALTON I. TANONAKA, the Defendant, did knowingly make a false statement and report for the purpose of influencing an

**EXHIBIT**

A

action of Central Pacific Bank ("CPB"), an institution the accounts of which are insured by the Federal Deposit Insurance Corporation, to wit, TANONAKA submitted a loan application to CPB that failed to disclose all liabilities and debts of TANONAKA.

All in violation of Title 18, United States Code, Section 1014.

COUNT 2

(False Statement on Loan Application)

The United States Attorney further charges:

2. On or about July 28, 2003, in the District of Hawaii, DALTON I. TANONAKA, the Defendant, did knowingly make a false statement and report for the purpose of influencing an action of CPB, an institution the accounts of which are insured by the Federal Deposit Insurance Corporation, to wit, TANONAKA submitted a loan application to CPB that failed to disclose all liabilities and debts of TANONAKA.

All in violation of Title 18, United States Code, Section 1014.

COUNT 3

(False Statements to U.S. House of Representatives)

The United States Attorney further charges:

3. On or about July 19, 2004, in the District of Hawaii, DALTON I. TANONAKA, the Defendant, did knowingly and willfully make a false writing and document, knowing the same to

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contain materially false, fictitious and fraudulent entries, in a matter within the jurisdiction of the United States House of Representatives, an agency within the Legislative Branch of the United States, to wit, TANONAKA submitted a "United States House of Representatives Financial Disclosure Statement" that contained false entries regarding TANONAKA's earned income, liabilities, and positions held.

All in violation of Title 18, United States Code, Section 1001(a)(3).

COUNT 4

(Accepting Illegal Campaign Contributions)

The United States Attorney further charges:

4. On or about October 8, 2004, in the District of Hawaii, DALTON I. TANONAKA, the Defendant, a candidate for the Office of Member of the United States House of Representatives, did knowingly and willfully solicit, accept, and receive a contribution in excess of the contribution limitation contained in the Federal Election Campaign Act, Title 2, United States Code, Section 441a(a)(1)(A), said contribution aggregating \$2,000

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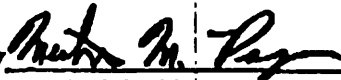
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or more during calendar year 2004, to wit, TANONAKA accepted a contribution from an individual in the approximate amount of \$11,000.

All in violation of Title 2, United States Code, Sections 441a(f) and 437g(d)(1)(A)(ii).

DATED: July 20, 2005, at Honolulu, Hawaii.

EDWARD H. KUBO, JR.  
United States Attorney

By   
MICHAEL M. PURPURA  
Assistant U.S. Attorney

United States v. Dalton I. Tanonaka  
Cr. No. 05-00304 HG  
"Information"

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